Before the
FEDERAL COMUNICATIONS COMMISSION
Washington, DC 20554

Accelerating Wireless Broadband Deployment By Removing Barriers to Infrastructure Investment	))	WC Docket No. 17-79

COMMENTS OF THE QUAD CITIES CABLE COMMUNICATIONS COMMISSION

The Quad Cities Cable Communications Commission ("QCCCC") files these comments in response to the above-titled Notice of Rulemaking and Inquiry ("Notice").[1] The QCCCC is a municipal joint powers body under Minnesota Statutes, Section 471.59 comprised of the cities of Andover, Anoka, Champlin and Ramsey, Minnesota.

The QCCCC was formed to address cable franchising and community programming matters for its member cities. The member cities are located in the northern Minneapolis/St. Paul suburbs with a collective population of nearly 100,000 residents.

INTRODUCTION

The QCCCC supports the comments filed by the League of Minnesota Cities in this proceeding. The QCCCC seeks to emphasize some of the difficulties that a new layer of federal limits on local review of wireless deployment applications may impose on Minnesota cities. These comments address the Notice's proposal to "harmonize the shot clocks" for all wireless zoning applications by, for instance, subjecting all requests to a 60 day review period. We also comment on the proposed "deemed granted" remedy if a local authority misses the review deadline for a non-Spectrum Act facilities application.

[1] *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment,* 82 Fed. Reg. 21761 (May 10, 2017).

The Notice also inquires whether to reaffirm or reconsider the *2014 Infrastructure Order* determination that the Commission's wireless regulations apply to actions on siting applications taken by local governments as land-use regulators, but not actions taken in a proprietary capacity as property owner. We briefly comment on this issue.

COMMENTS

Zoning property and associated zoning decisions, regulating utility access to public rights-of-way ("ROW"), and leasing or otherwise permitting attachments to facilities owned by a local government, whether in the ROW or not, are distinct activities. Each is subject to different legal standards and requirements. While the wireless industry sometimes ignores these distinctions, the Commission must not.

The Telecommunications Act of 1996 ("TCA") generally preserved state and local zoning authority over the siting of wireless facilities, only preempting zoning authority in certain specified circumstances. In particular, zoning authorities must "act on any request for authorization to place, construct, or modify personal wireless service facilities within a reasonable period of time… taking into account the nature and scope of such request."

A decade later, the Commission found that a "reasonable period of time" for approval or denial of wireless zoning requests should not exceed 90 days for complete collocation applications, or 150 days for other types of complete applications to place or modify wireless facilities (the "shot clock"). The zoning authority must act within the shot clock's presumptively "reasonable period of time" and, upon a failure to act by the relevant deadline, the applicant may sue within 30 days after the deadline. In such litigation, the zoning authority may attempt to "rebut the presumption that the established

timeframes are reasonable," for example, by demonstrating that a longer review period was reasonable in light of the "nature and scope of the request." Absent such a showing, a reviewing court may issue an injunction granting the application.

In 2012, Congress enacted the Spectrum Act[2] which restricts local governmental authority to deny wireless applications seeking collocation of certain wireless facilities on existing support structures, or certain modifications to existing facilities. Under the Spectrum Act, "a State or local government may not deny, and shall approve," applications to deploy or modify certain types of wireless facilities.

In the *2014 Infrastructure Order*, the Commission defined facilities and facilities modifications subject to the Spectrum Act, established a 60-day shot clock for action on applications under the Spectrum Act, and adopted a "deemed granted" remedy if an application is not acted upon within 60-days. The Commission determined that its Spectrum Act rules would apply only to local governmental regulatory actions, not proprietary activities such as leasing or otherwise allowing attachments of wireless facilities to governmental property.

The Notice now proposes to subject all wireless zoning applications, including non-Spectrum Act applications, to a 60-day deadline and establish a "deemed granted" remedy for failure to meet the deadline. The QCCCC opposes this proposal which would widen a gap between federal law and Minnesota state law.

Minnesota's Zoning Timelines

Minnesota imposes strict timelines on local zoning decisions. Failure to meet the deadline results in approval of the zoning application. Minnesota law provides in relevant part:

[2] 47 U.S.C. § 1455(a).

> ... an agency must approve or deny within 60 days a written request relating to zoning... for a permit, license, or other governmental approval of an action. Failure of an agency to deny a request within 60 days is approval of the request. If an agency denies the request, it must state in writing the reasons for the denial at the time that it denies the request.[3]

However, the local government can extend the 60-day review period to 120 days upon written notice to the zoning applicant.[4] Further extensions can be made with the applicant's consent.[5] If an application is ultimately denied, the written reasons for denial must be provided to the applicant upon adoption.[6]

Because of Minnesota's 60-day review period for zoning decisions, the Commission's shot clock has had relatively little impact in Minnesota. No wireless zoning decisions made by the QCCCC's four member cities have violated, or been alleged to violate, the shot clock. The member cities have acted on zoning applications by wireless providers within 60 or 120 days (where the timeline is extended), or a longer period expressly agreed upon with the applicant.[7]

The Commission's 60-day deadline under the Spectrum Act and "deemed granted" remedy is inconsistent with Minnesota's 60-day timeline under Minn. Stat. § 15.99. Minnesota's timeline can be extended up to 120 days by the local government, while the Commission's cannot. This incongruence, however, has not yet been problematic. Among the QCCCC's member cities, no wireless provider has made a zoning request claiming rights under the Spectrum Act and the Commission's associated deadline. But that may be about to change.

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[3] Minn. Stat. § 15.99, subd. 2(a).
[4] Minn. Stat. § 15.99, subd. 3(f).
[5] Id.
[6] Minn. Stat. § 15.99, subd. 2(c).
[7] Consistent with the TCA's recognition that "a reasonable period of time" for review may depend on "the nature and scope of [the] request," a zoning applicant may agree to a longer review period under Minnesota law if the application raises concerns that reasonably require more than 120 days to resolve.

"Small Cell" Legislation in Minnesota

As the Commission is well aware, in addition to seeking federal rules, the wireless industry is advocating for state legislation to address deployment of "small cell" facilities in public rights-of-way ("ROW"). Such legislation was proposed in Minnesota. After lengthy, and sometimes difficult, negotiations that included legislators, industry representatives and local officials, the legislature adopted amendments to Minnesota's comprehensive ROW law, Minn. Stat. §§ 237.162 and 237.163.[8] These amendments were signed into law by the Governor.[9]

The wireless industry's legislative advocacy in Minnesota confirmed that, among other priorities, the industry seeks to: 1) eliminate or greatly restrict zoning authority over deployment of facilities in the ROW; 2) require local review and approval of deployment of facilities at many sites in a given community simultaneously; and 3) limit the permissible application review period. The industry's goal is plain--- to promote deployment of "small cell" facilities at many sites with little local oversight and short review deadlines.

The resulting amendments to Minnesota's ROW law afford wireless providers the right to deploy "small cell" facilities in ROWs. Such rights are, however, expressly subject to municipal ROW permitting. Accordingly, the legislature affirmed municipal authority to regulate and manage "small cell" deployments in ROWs to address police power concerns. With respect to zoning, cities and other zoning authorities are required to make "small cell" facilities a permitted use in ROWs, provided that such facilities may

[8] In order for a local government to manage its ROWs under Minnesota law, it must adopt an ordinance consistent with the law and regulations promulgated by the Minnesota Public Utilities Commission.
[9] S.F. No. 1456., Art. 9 Telecommunications. https://www.revisor.mn.gov/bills/text.php?number=SF1456&session_year=2017&session_number=0&version=latest&format=pdf

be conditionally permitted (i.e. subject to issuance of a conditional use permit ("CUP")- a form of zoning approval) in residential areas. Wireless applicants may submit up to 15 applications for different sites in a community simultaneously as long as certain conditions are met. Local authorities have 90 days to act on an application or it is "deemed approved," provided that the period can be extended an additional 30 days (120 days total) if the local authority receives applications for 30 or more sites within 7 days.

These amendments to Minnesota's ROW law are so recent that the nuances have yet to be fully evaluated. For example, it is not clear whether a CUP application for a proposed "small cell" wireless facility in ROW through a residential area is subject to the 60-day deadline (extendable to 120 days) under Minn. Stat. § 15.99, or the new 90-day review deadline under the ROW law. Of course, this calculus will be more difficult where a wireless applicant files up to 15 applications, only some of which relate to ROW in residential areas.

What is evident, however, is that the Commission's competing shot clocks and remedies cannot be fully harmonized in a manner that respects applicable deadlines under Minnesota law. All parties involved in negotiating the amendments to Minnesota's ROW law would undoubtedly say that the concessions made and received were carefully considered. More broadly, Minnesota's ROW law prior to the recent amendments was the product of extensive negotiation involving all public and private utilities. And Minnesota's extendable 60-day deadline for action on zoning requests generally reflects a balance between the interests of land owners and the local governments charged with protecting the public interest. The Commission should not upset the balance Minnesota has struck through extensive effort. State deadlines for action on zoning and ROW

requests by wireless providers should be expressly preserved in any final Commission rules, not preempted.

Proprietary Activities

The wireless industry's advocacy in Minnesota confirms that the industry's state legislative efforts to promote "small cell" deployment track the Commission's Spectrum Act rules in several respects. For example:

- local government authority to request documentation or information from an applicant is specifically limited;
- moratoria are prohibited;
- facility deployments covered in both include antennas and associated equipment of a similar, specified volume;
- poles or support structures covered in both are defined similarly (a "base station" under the Spectrum Act rules; a "wireless support structure" under the amendments to the ROW law). Utility poles in the ROW are covered under both;
- "collocation" is similarly defined as the first placement of equipment on a support structure.

However, in a stark departure from the Spectrum Act rules, the industry's efforts to amend Minnesota's ROW law were focused on local governmental property and proprietary municipal activities. The industry's unambiguous goal was to make such property available for wireless attachments with minimal cost, conditions, and oversight. Lest there be any doubt, the industry's initial proposal (introduced as the original version of proposed legislation) would have redefined local government property, assets, and facilities used for any commercial activity (i.e. a vending machine in city hall) as part of the ROW itself. In turn, all such property would have been made available for wireless

facility attachment without payment of consideration or necessity for an attachment agreement.

In determining which of the industry's priorities were most objectionable to municipal interests, the proposal to render municipal buildings and facilities a part of the ROW was likely first among equals. Legislators that led the negotiations and drafting of legislation dismissed this approach early in the process. While the final amendments to Minnesota's ROW law do make municipal poles, facilities and other property located in the ROW available to the wireless industry under prescribed terms, the proprietary power of local governments to own, control and be compensated for private use of such property was reaffirmed.

There is an extensive and comprehensive body of common law in Minnesota addressing municipal proprietary powers. The Commission should follow the lead of the Minnesota legislature and reaffirm and preserve this power. A further layer of federal rules inconsistent with Minnesota law governing proprietary municipal powers would be extremely disruptive and unnecessary.

CONCLUSION

The QCCCC submits that Minnesota law and its member cities' local ordinances have not discouraged or created barriers to wireless broadband deployment. We anticipate no evidence or comment suggesting to the contrary. The QCCCC's members *welcome and desire* broadband deployment, and will work with any company seeking to add antennas or support structures in the ROW.

The QCCCC urges the Commission to refrain from interfering with Minnesota state law. Hundreds of local ordinances have been adopted to implement Minnesota's

zoning and ROW laws, and thousands of hours have been spent negotiating these laws, ordinances and practices including the most recent amendment to the ROW law. Imposing a new federal regulatory overlay would create unnecessary costs of compliance for our communities, may undermine important local policies, and would create regulatory uncertainty and confusion.

Dated: June 15, 2017.

Respectfully submitted,

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